

Message

From: Seneca, Roy [Seneca.Roy@epa.gov]
Sent: 9/22/2021 5:31:53 PM
To: Gillespie-Marthaler, Leslie [GillespieMarthaler.Leslie@epa.gov]
Subject: RE: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

Thank you Leslie.

From: Gillespie-Marthaler, Leslie <GillespieMarthaler.Leslie@epa.gov>
Sent: Wednesday, September 22, 2021 1:31 PM
To: Seneca, Roy <Seneca.Roy@epa.gov>; Koffi, LaRonda <Koffi.LaRonda@epa.gov>; Fulton, Jennifer <Fulton.Jennifer@epa.gov>; Martinsen, Jessica <Martinsen.Jessica@epa.gov>
Cc: White, Terri-A <White.Terri-A@epa.gov>; Landis, Jeffrey <Landis.Jeffrey@epa.gov>; Garcia, Beth <garcia.beth@epa.gov>; Amend, Carol <amend.carol@epa.gov>
Subject: RE: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

Roy and LaRonda,

I'm looping Jen and Jess in to see what they can provide.

Leslie

Leslie Gillespie-Marthaler, Ph.D.
Deputy Director
Water Division
USEPA Region 3
1650 Arch Street 3WD00
Philadelphia, PA 19103
215-814-2735
GillespieMarthaler.Leslie@epa.gov

From: Seneca, Roy <Seneca.Roy@epa.gov>
Sent: Wednesday, September 22, 2021 1:29 PM
To: Koffi, LaRonda <Koffi.LaRonda@epa.gov>; Gillespie-Marthaler, Leslie <GillespieMarthaler.Leslie@epa.gov>
Cc: White, Terri-A <White.Terri-A@epa.gov>; Landis, Jeffrey <Landis.Jeffrey@epa.gov>; Garcia, Beth <garcia.beth@epa.gov>; Amend, Carol <amend.carol@epa.gov>
Subject: FW: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions
Importance: High

Leslie and LaRonda – The HQ press office has asked the Region for help in responding to a follow-up question from Charleston Gazette-Mail reporter Mike Tony. We originally thought ECAD would be the best to respond, but Carol Amend suggested that it might be best for somebody from NPDES permitting to respond. Check out the email chain and let me know if somebody from your staff could help respond to this question:

Question: I wanted to circle back to this and see if could specify or direct me to what transfer provisions would be required under Section 423.13(o)?

As always, thanks for any help you can provide. – Roy

From: Amend, Carol <amend.carol@epa.gov>
Sent: Wednesday, September 22, 2021 1:12 PM
To: Hall, Kristen <hall.kristen@epa.gov>; Seneca, Roy <Seneca.Roy@epa.gov>
Cc: Garcia, Beth <garcia.beth@epa.gov>; Melvin, Karen <Melvin.Karen@epa.gov>; White, Terri-A <White.Terri-A@epa.gov>; Landis, Jeffrey <Landis.Jeffrey@epa.gov>; Delgrosso, Karen <Delgrosso.Karen@epa.gov>; Sternberg, David <Sternberg.David@epa.gov>
Subject: RE: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

It looks like this question relates to the Effluent Guidelines for Steam Electric Power Generation, which are regulations under the NPDES program (under the Clean Water Act). This question should be directed to the Water Division, probably the permits group.

Thanks,
Carol

*Carol Amend, Chief
Air, RCRA & Toxics Branch
Enforcement & Compliance Assurance Division
EPA, Region 3
215-814-5430
amend.carol@epa.gov*

From: Hall, Kristen <hall.kristen@epa.gov>
Sent: Wednesday, September 22, 2021 9:31 AM
To: Seneca, Roy <Seneca.Roy@epa.gov>; Amend, Carol <amend.carol@epa.gov>
Cc: Garcia, Beth <garcia.beth@epa.gov>; Melvin, Karen <Melvin.Karen@epa.gov>; White, Terri-A <White.Terri-A@epa.gov>; Landis, Jeffrey <Landis.Jeffrey@epa.gov>; Delgrosso, Karen <Delgrosso.Karen@epa.gov>; Sternberg, David <Sternberg.David@epa.gov>
Subject: RE: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

Hi Roy,

This should be directed to Carol Amend, this is RCRA issue not a CAA issue,

Thanks
Kris

Kris Hall
Chief, Air Section
Enforcement & Compliance Assurance Division
Air, RCRA and Toxics Branch
US EPA Region 3
1650 Arch Street – 3ED21
Philadelphia, PA 19103
215-814-2168
Hall.Kristen@epa.gov

From: Seneca, Roy <Seneca.Roy@epa.gov>
Sent: Wednesday, September 22, 2021 9:28 AM
To: Hall, Kristen <hall.kristen@epa.gov>

Cc: Garcia, Beth <garcia.beth@epa.gov>; Melvin, Karen <Melvin.Karen@epa.gov>; White, Terri-A <White.Terri-A@epa.gov>; Landis, Jeffrey <Landis.Jeffrey@epa.gov>; Delgrosso, Karen <Delgrosso.Karen@epa.gov>; Sternberg, David <Sternberg.David@epa.gov>

Subject: FW: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

Importance: High

Kris – The HQ press office has been responding to an inquiry from Charleston Gazette-Mail reporter Mike Tony about Appalachian Power and Wheeling Power electric utilities, but HQ has now asked Region 3 to help with a response to a follow-up question. Check out the email stream below and let us know if you can respond to his latest question. Thanks for any help you can provide. – Roy

Question: I wanted to circle back to this and see if could specify or direct me to what transfer provisions would be required under Section 423.13(o).

From: White, Terri-A <White.Terri-A@epa.gov>

Sent: Wednesday, September 22, 2021 9:16 AM

To: Seneca, Roy <Seneca.Roy@epa.gov>

Cc: Landis, Jeffrey <Landis.Jeffrey@epa.gov>

Subject: FW: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

Importance: High

Good morning, Roy

See follow-up question from reporter Mike Tony below. HQ is saying that it is more appropriate for the Region to handle. Please check in with ECAD to find out if they can answer his question. Thanks.

Terri

Terri A. White

Chief, Communications Branch

Office of Public Affairs

EPA Region 3

215-814-5523

white.terri-a@epa.gov

From: Joseph, Dominique

Sent: Wednesday, September 22, 2021 8:45 AM

To: Nitsch, Chad <Nitsch.Chad@epa.gov>; White, Terri-A <White.Terri-A@epa.gov>

Subject: Media Inquiry: DEADLINE - ASAP: ELG Rule Compliance Questions

Importance: High

Good morning,

I checked with both OECA and OW on a response to the reporter's latest question and it looks like region 3 may be the most appropriate office to assist.

Do you have any information on the transfer provision he's referring to?

Dominique Joseph (she/her/hers)

Senior Communications Advisor
U.S. Environmental Protection Agency
202-805-3635 (cell)
202-564-1767 (office)
joseph.dominique@epa.gov

From: Mike Tony <mtony@hdmediallc.com>
Sent: Monday, September 20, 2021 2:58 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Hi Melissa,

I wanted to circle back to this and see if could specify or direct me to what transfer provisions would be required under Section 423.13(o). Thanks very much again.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Wednesday, September 15, 2021 1:43 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

CAUTION:

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Good afternoon Mike,

Please see our response below.

Question:

Does EPA know (or would DEP know) whether Appalachian Power and Wheeling Power properly incorporated transfer provisions under Section 423.13(o) to be able to transfer out of the permanent cessation of coal combustion subcategory at a later date?

Response:

Please reach out to WV DEP.

Question:

Can EPA confirm that Appalachian Power and Wheeling Power submitted requests to extend the CCR rule deadline?

Response:

Applications for deadline extensions were submitted to EPA for the following facilities:

- John Amos, St Albans, WV (American Electric Power, or Appalachian Power)
- Mitchell, Captina, WV (American Electric Power, or Appalachian Power)
- Mountaineer, New Haven, WV (American Electric Power, or Appalachian Power)

Thank you,
Melissa

On Sep 14, 2021, at 4:42 PM, Mike Tony <mtony@hdmediallc.com> wrote:

Thank you for the update and for your continued help. I really appreciate it.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Tuesday, September 14, 2021 4:35 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Mike,

Your follow-ups require coordination between multiple offices.

We hope to have something for you tomorrow.

Thank you for your continued patience.

Melissa

On Sep 14, 2021, at 12:18 PM, Mike Tony <mtony@hdmediallc.com> wrote:

Good afternoon, Melissa. Thank you for the helpful responses. Following up, does EPA know (or would DEP know) whether Appalachian Power and Wheeling Power properly incorporated transfer provisions under Section 423.13(o) to be able to transfer out of the permanent cessation of coal combustion subcategory at a later date? Also, can EPA confirm that Appalachian Power and Wheeling Power submitted requests to extend the CCR rule deadline? Thanks very much again for any additional insight you can provide.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Tuesday, September 14, 2021 12:02 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

CAUTION:

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Good afternoon Mike,

Thank you for your patience. Please see our response below.

1. The utilities say that there is an Oct. 13 deadline for them to notify the West Virginia Department of Environmental Protection whether they intend to retire the plants to comply with the ELG rule. Is that true, and if so, can that deadline be extended? **EPA RESPONSE:** The current ELG requires that facilities intending to participate in the subcategory for permanent cessation of coal combustion must file a notice of planned participation with their permitting authority (in this case, WVDEP) no later than October 13, 2021. Nothing in the rule provides for an extension of this deadline and EPA has no intent to revise this requirement via rulemaking over the next month. However, a facility who had properly incorporated transfer provisions under Section 423.13(o) may be able to transfer out of the permanent cessation of coal combustion subcategory at a later date pursuant to those provisions.
2. If the Companies later decide not to complete ELG compliance improvements for some units, will they be required to cease coal operations at those units by each unit's ELG compliance deadline (June 30, 2023 for Mitchell, Dec. 31, 2022 for Amos and June 1, 2022 for Mountaineer)? **EPA RESPONSE:** If the permitting authority (in this case, WVDEP) has determined a "no later than" date under 423.11(t), then a facility must comply with limitations by this date either through changes in operations, installation of additional pollution control technology, or cessation of discharge (e.g., by ceasing operations).
3. Is it true, as the utilities report, that the EPA has tolled an April 11, 2021 deadline date to begin closing bottom ash ponds at the three coal-fired power plants (the Amos, Mitchell and Mountaineer facilities) pending its decision on the extension requests and has not issued a decision regarding their requests to extend the CCR rule deadline? (pages 20 and 21 here) EPA continues to evaluate the requests facilities submitted for extensions to the April 11, 2021 deadline of when unlined coal combustion residual (CCR) surface impoundments must stop receiving waste. EPA is carefully reviewing the requests and will be making

thoughtful decisions on them. Until final determinations are made, the deadline to stop placing waste into unlined CCR surface impoundments is paused for the facilities that have submitted extension requests. The deadline pause only applies to the surface impoundments for which a facility submitted an extension request.

Thank you,
Melissa

On Sep 14, 2021, at 9:53 AM, Mike Tony <mtony@hdmediallc.com> wrote:

Thank you for the update. If it's helpful, highlighted below are passages that appear to indicate that a company may tell EPA it is retiring units without losing the option of later going back and saying that it will conduct the required retrofits:

40 CFR § 423.19(f):

(f) Requirements for units that will achieve permanent cessation of coal combustion by December 31, 2028.

(1) Notice of Planned Participation. For sources seeking to qualify as an electric generating unit that will achieve permanent cessation of coal combustion by December 31, 2028, under this part, a Notice of Planned Participation shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than October 13, 2021.

40 CFR § 423.13(o): provides the option to transfer from the retirement exemption to being regulated under the regular ELG rule or to limitations that apply to “low utilization electric generating units,” until December 31, 2023 or December 31, 2025. See below and 423.13(g)(2) & 423.13(k)(2)

But if the company instead moves forward with being regulated under the “more stringent limitations of the ELG rule” now, it “must continue to meet those more stringent limitations.”

(o)(1) Transfer between applicable limitations in a permit. Where, in the permit, the permitting authority has included alternative limits subject to eligibility requirements, upon timely notification to the permitting authority under § 423.19(i), a facility can become subject to the alternative limits under the following circumstances:

(i) On or before December 31, 2023 a facility may convert:

(A) From limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) or (k)(2)(ii) of this section to limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section; or

(B) From voluntary incentives program limitations under paragraph (g)(3)(i) of this section or generally applicable limitations under paragraph (k)(1)(i) of this section to limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section.

(ii) On or before December 31, 2025 a facility may convert

(A) From voluntary incentives program limitations under paragraph (g)(3)(i) of this section to limitations for electric generating units permanently ceasing coal combustion under paragraph (g)(2)(i) of this section; or

(B) From limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) or (k)(2)(ii) of this section to voluntary incentives program limitations under paragraphs (g)(3)(i) of this section or generally applicable limitations under (k)(1)(i) of this section; or

(C) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to generally applicable limitations under paragraphs (g)(1)(i) or (k)(1)(i) of this section; or

(D) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to voluntary incentives program limitations under paragraphs (g)(3)(i) of this section or generally applicable limitations under paragraph (k)(1)(i) of this section; or

(E) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) and (k)(2)(ii) of this section.

(2) A facility must be in compliance with all of its currently applicable requirements to be eligible to file a notice under § 423.19(i) and to become subject to a different set of applicable requirements under paragraph (o)(1) of this section.

(3) Where a facility seeking a transfer under paragraph (o)(1)(ii) of this section is currently subject to more stringent limitations than the limitations being sought, the facility must continue to meet those more stringent limitations.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Tuesday, September 14, 2021 8:42 AM
To: Mike Tony <mtony@hdmediallc.com>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

CAUTION:

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Good morning Mike,

We have not forgotten about you.

Hope to have something for you soon.

Thank you,
Melissa

On Sep 14, 2021, at 6:03 AM, Mike Tony
<mtony@hdmediallc.com> wrote:

Hi Melissa,

I just wanted to follow up on this.

Thanks,
Mike

From: Mike Tony <mtony@hdmediallc.com>
Sent: Friday, September 10, 2021 3:56 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Sure thing. Thanks again in advance.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Friday, September 10, 2021 3:54 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: RE: Media Inquiry: ELG Rule Compliance Questions

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Thank you for your flexibility and patience. I will be in touch on Monday.

Melissa A. Sullivan (She/Her/Hers)
Office of Public Affairs
U.S. Environmental Protection Agency
202 913 3840
Sullivan.Melissa@epa.gov

From: Mike Tony <mtony@hdmediallc.com>
Sent: Friday, September 10, 2021 3:52 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Hi Melissa,

Yes, I can extend to Monday. Thank you again.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Friday, September 10, 2021 3:48 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: RE: Media Inquiry: ELG Rule Compliance Questions

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Good afternoon Mike,

We continue to work on this for you.

In order to be as responsive as possible, we require more time.

Are you able to extend to Monday?

Thank you,
Melissa

Melissa A. Sullivan (She/Her/Hers)
Office of Public Affairs
U.S. Environmental Protection Agency
202 913 3840
Sullivan.Melissa@epa.gov

From: Mike Tony <mtony@hdmediallc.com>
Sent: Friday, September 10, 2021 11:48 AM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Thank you, Melissa. I appreciate it.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Friday, September 10, 2021 8:26 AM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Thank you, Mike.

We will do our best to meet your deadline.

On Sep 9, 2021, at 6:34 PM, Mike Tony
<mtony@hdmediallc.com> wrote:

Would you be able to provide
responses to my questions by

tomorrow at 3 p.m.? Thank you again.

From: Mike Tony
<mtony@hdmediallc.com>
Sent: Thursday, September 9, 2021 5:35 PM
To: Sullivan, Melissa
<sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

What's in question here, for further clarity, is the argument that under the ELG rule, American Electric Power subsidiaries could submit a NOPP in October but later decide not to take advantage of the early retirement option and instead make ELG retrofits and continue operating power plants past 2028. The statute in question seems to be 40 C.F.R. § 423.13(o)(1)(i)(A), (o)(1)(ii)(B). Thank you again for any insight you can provide.

From: Mike Tony
<mtony@hdmediallc.com>
Sent: Thursday, September 9, 2021 5:28 PM
To: Sullivan, Melissa
<sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

I will be filing this story shortly, but I would still be grateful for any response that you can provide whenever you can provide it. Thank you again.

From: Sullivan, Melissa
<sullivan.melissa@epa.gov>
Sent: Thursday, September 9, 2021 5:19 PM
To: Mike Tony
<mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Media Inquiry: ELG Rule Compliance Questions

CAUTION:

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Good afternoon Mike,

We at HQ received your inquiry from our colleagues.

We are checking on your questions.

Is an extension is possible?

Thank you,
Melissa

From: Mike Tony
<mtony@hdmediallc.com>

Sent: Thursday,
September 09, 2021
12:34 AM

To: White, Terri-A
<White.Terri-A@epa.gov>; Seneca,
Roy
<Seneca.Roy@epa.gov>
; Sternberg, David
<Sternberg.David@epa.gov>

Subject: ELG Rule
Compliance Questions

Hope you're doing well. I'm working on a story on the Appalachian Power and Wheeling Power electric utilities requesting that the West Virginia Public Service Commission reopen a case in

which they're seeking approval for implementation of and cost recovery for compliance with the EPA's coal combustion residual and effluent limitation guidelines at three different in-state coal-fired power plants. I have the following questions that I was hoping you could provide responses for by my deadline of 3:30 p.m. today. Thank you very much regardless.

1. The utilities say that there is an Oct. 13 deadline for them to notify the West Virginia Department of Environmental Protection whether they intend to retire the plants to comply with the ELG rule. Is that true, and if so, can that deadline be extended?
2. If the Companies later decide not to complete ELG

compliance
improvements
for some
units, will they
be required to
cease coal
operations at
those units by
each unit's
ELG
compliance
deadline (June
30, 2023 for
Mitchell, Dec.
31, 2022 for
Amos and
June 1, 2022
for
Mountaineer)
?

3. Is it true, as
the utilities
report, that
the EPA has
told an April
11, 2021
deadline date
to begin
closing
bottom ash
ponds at the
three coal-
fired power
plants (the
Amos,
Mitchell and
Mountaineer
facilities)
pending its
decision on
the extension
requests and
has not issued
a decision
regarding
their requests
to extend the
CCR rule
deadline?

(pages 20 and
21 here)

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